

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4845 of 1999

with

CRIMINAL MISC.APPLICATION No 4844 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KHEDA PEOPLE'S CO-OPERATIVE BANK LTD.

Versus

R S PATEL, GOVERNMENT LABOUR OFFICER

Appearance:

MR HM PARIKH for Petitioners

NOTICE SERVED for Respondent No. 1

MR BY MANKAD ADDL PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 06/10/1999

COMMON ORAL JUDGEMENT

#. Heard learned counsels appearing for the

parties. Rule. Mr.Mankad, learned APP waives service of rule for respondents. With the consent of the learned advocates for the parties, this matter is taken up for final hearing today.

#. By these two petitions, the original accused of two different criminal cases have prayed criminal proceedings initiated by Government Labour Officer of District : Kheda under the provisions of Payment of Bonus Act and under the Industrial Disputes Act be quashed and set aside. Petitioner No.1 is a co-operative society registered under the Gujarat Co-operative Societies Act, 1961. Petitioner No : 2 & 3 are the office bearers of the society and petitioner No.4 is the manager of the society.

#. After the service of the notice to original complainant - Government Labour Officer and respondent No.2 - State of Gujarat tenders affidavit resisting the petition and the same is taken on record in both these matters.

#. Initially, according to the learned counsel appearing for the petitioner, because of the bonafide mistake, the amount of bonus was miscalculated so far as the amount paid to Kusumben Govindbhai and Shantaben Kantilal is concerned. There was some dispute as to their status as worker in the society but on realisation of the correct legal position, fresh calculation was made and the society has paid the amount of dues for which both these workers were entitled. The Government Labour Officer who was present on 28th September, 1999 was asked to verify as to whether the statement made by the learned counsel is true because he had not received any written instruction from the petitioner - Co-operative society. Mr. Mankad, learned APP appearing for the respondents confirms that the calculation mistake has been rectified and both these workers are paid the bonus in accordance with rules at par with the other workers who were paid bonus at the 20 % of their respective salary. Considering the nature of the alleged offence, this Court feels that they should not be dragged further into litigation. It can be said that the parties have compounded the offence i.e. original workers and the co-operative society. The learned APP Mr.Mankad submits that appropriate order may be passed looking to the development and the bonafide mistake committed earlier by the society. This is not the case of exploitation or victimization and the elements of criminality is totally missing and therefore, the criminal proceedings initiated against the Co-Operative society require to be quashed

and set aside. It is pertinent to note that the Chairman and the Managing Director on many occasions are not aware about the calculations made by the staff members as to amount of bonus paid to employees or workers working in the institution. Even otherwise, it is matter of doubt that the prosecution would have been sustained against these two persons i.e. present petitioners No.2 & 3.

#. Another complaint pertains to the violation of Section 25(i)(t) of the Industrial Disputes Act. The concerned workers are already reinstated and they are also paid the amount of bonus for which they were entitled. Even after going through the entire complaint, it is difficult to say that the co-operative society has indulged into unfair labour practice. There was bonafide dispute between the employees terminated and the co-operative society and as the competent Court has given verdict against the co-operative society, accepting that verdict that co-operative society has implemented the award and rectified the mistake on receipt of the proper advice. So, both these complaints should be quashed and the office bearers of the co-operative society should not be compelled to undergo the stress of the criminal proceedings. The Labour Department is also now satisfied with the behavior of the petitioner No.1 - Kheda People's Co-operative Bank Ltd., therefore, this Court is inclined to allow both these petitions as prayed for in terms of relevant prayer clause.

#. Therefore, in the result, the criminal case No : 7 of 1999 and Criminal Case No : 213 of 1999 pending in the Court of learned JMFC, Kheda are hereby terminated and quashed accordingly. Rule is made absolute accordingly in each application.

Date : 6-10-1999 [C.K.Buch, J.]

#kailash#